(2015) 09 KAR CK 0389

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 2413 of 2015 (MV)

Basammanni and Others — APPELLANT

Vs

Masqsud Ahamed Shariff and Others — RESPONDENT

Date of Decision : 21-09-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2015) 09 KAR CK 0389

Hon'ble Judges : N.K. Patil, J;P.S. Dinesh Kumar, J

Bench : Division Bench

Advocate : B.N. Manjula for R.C. Nagaraj, for the Appellant

Final Decision : Partly Allowed

Judgement

N.K. Patil, J—This appeal by the claimants-appellants is directed against the impugned judgment and award dated 28/03/2014, passed in MVC No. 135/2012, by the Senior Civil Judge & C.J.M. & Member, Motor Accident Claims Tribunal, Chamarajanagar, (hereinafter referred to as "Tribunal" for short), for enhancement of compensation.

2. The Tribunal by its judgment and award, has awarded a sum of Rs. 5,95,000/- under different heads with interest at 6% per annum from the date of petition till realization, as against the claim of the appellants for a sum of Rs. 50,80,000/-, on account of the death of the deceased Sri. Kumara, in the road traffic accident.

3. In brief, the facts of the case are:

The appellant Nos. 1 and 2 are the mother and brother of the deceased. They along with the father of the deceased have filed a claim petition before the Tribunal under Section 166 of M.V. Act, claiming compensation against the respondents, on account of the death of the deceased in the road traffic accident, contending that on 3.8.2012 at about 3.15 p.m. deceased was the pillion rider of the Motor bike bearing Reg. No. KA.10.K.8853 which was driven by one M. Mahesha and when the said motor bike came near Kaligowdanahalli gate, at that time, the driver of Tata Safari car bearing Reg. No. KA.05.MD.1206 came in a rash and negligent manner from opposite direction and dashed to the motorbike and caused the accident. On account of which, deceased sustained grievous injuries and died at the spot.

4. It is the further case of the appellants that, deceased was aged about 30 years, hale and healthy prior to the accident, working as Head Cook in M.C. Resorts and drawing the salary of Rs. 15,000/- per month and looking after the welfare of the family. The untimely death of the deceased has affected the social and financial condition of the family as they have lost their earning member, apart from mental shock and agony.

5. The said claim petition had come up for consideration before the Tribunal. The Tribunal, after appreciating the oral and documentary evidence and other material available on file, has allowed the claim petition in part and awarded the compensation of Rs. 5,95,000/- under different heads with interest at 6% p.a., from the date of petition till realization.

6. Not being satisfied with the compensation and the rate of interest awarded by the Tribunal, the appellants have presented this appeal, for enhancement of compensation.

7. We have heard learned counsel appearing for the appellants and learned counsel appearing for Insurer.

8. The submission of learned counsel Smt. B.N. Manjula, for Sri. R.C. Nagaraj, appearing for the appellants, at the outset is that, the Tribunal has erred in not assessing the income of the deceased reasonably and what is assessed is on the lower side, on the ground that, deceased was aged about 30 years, working as Head Cook in M.C. Resorts and drawing the salary of Rs. 15,000/- per month. Therefore, she submitted that, the income of the deceased may be re-assessed reasonably and after deducting 50% towards his personal and living expenses and adopting the multiplier of ''17'' taking the age of the deceased in the light of the judgment of the Apex Court in Munnalal Jain''s case reported in 2015 SCW 3015, reasonable compensation may be awarded towards loss of dependency. She further submits that the compensation awarded by the Tribunal towards conventional heads and the rate of interest awarded at 6% p.a., is on the lower side and is liable to be enhanced reasonably in the light of the judgments of the Apex Court and this Court. Therefore, she submitted that the impugned judgment and award is liable to be modified.

9. As against this, learned counsel for the Insurer, inter-alia, contended and substantiated that the impugned judgment and award passed by the Tribunal is just and proper and after due appreciation of the oral and documentary evidence available on file and therefore, it does not call for interference.

10. After hearing the learned counsel for both the parties and after careful perusal of the material available on record at threadbare, including the impugned

judgment and award passed by the Tribunal, the only point that arises for our consideration is:

Whether the compensation awarded by the Tribunal is just and reasonable?

11. The occurrence of the accident and the resultant death of the deceased are not in dispute. It is also not in dispute that appellants are the mother and brother of the deceased and they along with the father of the deceased have filed a claim petition before the Tribunal seeking compensation. It is the case of the appellants that deceased was aged about 30 years, working as Head cook in M.C. Resorts and drawing the salary of Rs. 15,000/- per month. But they have not produced any credible documents to prove the same. Having regard to the age, occupation of the deceased, year of accident, we re-assess his income at Rs. 10,000/- per month to meet the ends of justice instead of Rs. 5,000/- per month as assessed by the Tribunal. Out of which, if 50% (Rs. 5,000/-) is deducted towards the personal and living expenses of the deceased, since he was a bachelor, his net income comes to Rs. 5,000/- per month. In the light of the judgment of the Apex Court in Munnalal Jain''s case (stated supra), the appropriate multiplier applicable taking the age of the deceased as 30 years is ''17'' and therefore, the Tribunal has justified in adopting the Multiplier of ''17'' taking the age of the deceased and we accept the same. Therefore, we re-determine the loss of dependency at Rs. 10,20,000/- (Rs. 5,000/- x 12 x 17) instead of Rs. 5,10,000/- awarded by the Tribunal and accordingly, it is awarded.

12. Having regard to the facts and circumstances of the case, we award a sum of Rs. 25,000/- towards loss of estate and Rs. 25,000/- towards transportation and funeral expenses. However, a sum of Rs. 50,000/- awarded by the Tribunal towards loss of love and affection is just and reasonable and therefore, it does not call for interference.

13. Further, as rightly pointed out by the learned counsel appearing for the appellants, the rate of interest awarded by the Tribunal at 6% p.a., from the date of petition till its realization is on the lower side and is liable to be enhanced since the accident is of the year 2012. In the light of the judgment of Apex Court and this Court, we award the rate of interest at 9% per annum from the date of petition till its realization on the enhanced compensation instead of 6% p.a. as awarded by the Tribunal. In all, the appellants are entitled to the total compensation of Rs. 11,20,000/- instead of Rs. 5,95,000/- awarded by the Tribunal.

14. Regarding rate of interest, as rightly pointed out by the learned counsel appearing for the appellants, 6% interest per annum awarded by the Tribunal is on the lower side, since the accident is of the year 2012. In the light of the judgment of Apex Court and this Court, we award the rate of interest at 9% per annum on the enhanced compensation instead of 6% awarded by the Tribunal.

There would be an enhancement of compensation of Rs. 5,25,000/- with interest at 9% p.a., from the date of petition till its realization (excluding interest for the delayed period of 271 days in filing the appeal).

15. For the foregoing reasons, the appeal filed by the appellants is allowed in part. The impugned judgment and award dated 28/03/2014, passed in MVC No. 135/2012, by the Senior Civil Judge & C.J.M., Member, Motor Accident Claims Tribunal, Chamarajanagar, is hereby modified, awarding a sum of Rs. 5,25,000/- with interest at 9% p.a., from the date of petition till its realization (excluding interest for the delayed period of 271 days in filing the appeal) in addition to the compensation awarded by the Tribunal.

The Insurer is directed to deposit the enhanced compensation of Rs. 5,25,000/- with interest at 9% p.a., from the date of petition till the date of realization, (excluding interest for the delayed period of 271 days in filing the appeal), within a period of three weeks from the date of receipt of a copy of this judgment.

Out of the enhanced compensation of Rs. 5,25,000/-, a sum of Rs. 4,00,000/- with proportionate interest shall be invested in the Fixed Deposit in the name of appellant No. 1, mother of the deceased, in any Nationalized or Scheduled or Grameena Bank, for a period of ten years, renewable by another ten years, with liberty reserved to her to withdraw the interest accrued on it, periodically.

The remaining sum of Rs. 1,25,000/- with proportionate interest shall be released in favour of the appellant No. 1 immediately.

Draw the award, accordingly.

